

## SENATE BILL NO. 346

INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ~~A PERSON WHO~~ PUBLIC CONTRACTS WITH THE  
STATE OR A POLITICAL SUBDIVISION OF THE STATE FROM CONTRACTING WITH AN ILLEGAL AND  
SUBCONTRACTS WITH A PERSON WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN  
UNAUTHORIZED ALIEN AND PROHIBITING AN ~~ILLEGAL~~ UNAUTHORIZED ALIEN FROM MAKING CERTAIN  
CONTRACTS WITHIN THE STATE; PROVIDING A PENALTY; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, it is the policy of the United States, as expressed in 8 U.S.C. 1324a, that ~~it is unlawful for~~  
~~an employer to employ an illegal~~ AN EMPLOYER IS PROHIBITED FROM EMPLOYING AN UNAUTHORIZED alien; and

WHEREAS, the Montana Supreme Court held in *McManus v. Fulton*, 85 Mont. 170, 278 P. 126 (1929),  
that a contract against public policy is void; and

WHEREAS, section 28-2-702, MCA, provides that a contract provision, the fulfillment of which is illegal,  
is a void provision; and

WHEREAS, the federal government has insufficient officers and agents required to effectively police the  
country for aliens who have arrived or remain in this country in violation of federal law; and

WHEREAS, Montana should support the actions of the federal government in reducing the incidence of  
illegal alien employment in the United States, and it is a compelling state interest for Montana to support the  
federal government by prohibiting contractors with the state, or political subdivisions of the state, from employing  
illegal aliens and by making it a criminal offense for an illegal alien to contract for employment with a public or  
private sector employer.

WHEREAS, PUBLIC AGENCIES SHOULD TAKE REASONABLE MEANS TO REQUIRE THOSE WITH WHOM THEY  
CONTRACT AND SUBCONTRACT TO COMPLY WITH FEDERAL LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. State and local contractors not to employ or contract with illegal**  
**UNAUTHORIZED aliens.** (1) A person who contracts with a public agency may not ~~employ or contract with~~, for the  
purposes of fulfilling the person's contractual obligations with the public agency, ~~an alien determined by the~~

~~federal government to be deportable.~~

~~———— (2) A public agency shall terminate a contract with a person determined by the agency to be in violation of subsection (1).~~

~~———— (3) The requirements of this section are considered to be a term of every contract between a public agency and a person contracting with the public agency: KNOWINGLY EMPLOY OR CONTRACT WITH:~~

~~(A) AN UNAUTHORIZED ALIEN, AS DEFINED IN 8 U.S.C. 1324A(H)(3), OR WITH A PERSON WHOM THE CONTRACTOR OR SUBCONTRACTOR SHOULD HAVE KNOWN WAS AN UNAUTHORIZED ALIEN; OR~~

~~(B) ANOTHER PERSON WHO KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN OR A PERSON WHOM THE EMPLOYER OR CONTRACTOR SHOULD HAVE KNOWN WAS AN UNAUTHORIZED ALIEN.~~

(2) A PERSON WHO CONTRACTS WITH A PUBLIC AGENCY OR THE SUBCONTRACTOR OF A PERSON WHO CONTRACTS WITH A PUBLIC AGENCY WHO VIOLATES SUBSECTION (1) IS IN MATERIAL BREACH OF THE CONTRACT. IN THE EVENT OF A BREACH, THE PUBLIC AGENCY MAY PURSUE ALL LEGAL CONTRACT REMEDIES, INCLUDING BUT NOT LIMITED TO TERMINATING THE CONTRACT OR SUBCONTRACT. IN ADDITION, THE PUBLIC AGENCY MAY PROHIBIT THE CONTRACTOR OR SUBCONTRACTOR FROM BIDDING ON A CONTRACT OR CONTRACTING WITH THE PUBLIC AGENCY FOR A PERIOD NOT TO EXCEED 3 YEARS.

(3) A CONTRACT OF A PUBLIC AGENCY MUST EXPRESSLY STATE THE REQUIREMENTS OF THIS SECTION.

(4) A PUBLIC AGENCY TERMINATING A CONTRACT PURSUANT TO SUBSECTION (2) SHALL REPORT THE TERMINATION TO THE LEGISLATIVE AUDIT DIVISION, PROVIDED FOR IN 5-13-301, AT THE END OF THE CALENDAR YEAR IN WHICH THE CONTRACT WAS TERMINATED. THE REPORT MUST STATE THE NUMBER AND TYPE OF CONTRACTS TERMINATED AND THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE PERSON CONTRACTING WITH THE PUBLIC AGENCY OR ANOTHER PERSON CONTRACTING WITH THAT PERSON.

NEW SECTION. Section 2. Employment contract with illegal UNAUTHORIZED aliens prohibited -- void contract -- misdemeanor. (1) An UNAUTHORIZED alien ~~who the United States has determined to be deportable~~, AS DEFINED IN 8 U.S.C. 1324A(H)(3), may not:

(a) make a contract for employment in this state; or

(b) contract, as an independent contractor, with a person for the purposes of fulfilling a contract between the person and a public agency, as defined in 18-1-101.

~~(2) A contract made in violation of this section is void.~~

~~(3)~~(2) An alien who violates this section is guilty of a misdemeanor and upon conviction shall be punished

1 as provided by law.

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3 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an  
4 integral part of Title 18, chapter 1, and the provisions of Title 18, chapter 1, apply to [section 1].

5 (2) [Section 2] is intended to be codified as an integral part of Title 28, chapter 2, and the provisions of  
6 Title 28, chapter 2, apply to [section 2].

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8 **NEW SECTION. Section 4. Applicability.** [This act] applies to a contract entered into on or after  
9 October 1, 2007.

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